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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

SCHILLINGER, LAURA M

ART UNIT	PAPER NUMBER
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2813

DATE MAILED: 06/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/770,540

Applicant(s)

SCHUEGARAF, KLAUS F.

Examiner

Laura M Schillinger

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-12 and 20-24 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-12 and 20-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefore ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 9-10 are objected to under 37 CFR 1.75 as being a substantial duplicate of claim 6 of Patent No. 6,197,634. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim 6 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 6 of U.S. Patent No. 6,197,634. Although the conflicting claims are not identical, they are not patentably distinct from each other because they merely reflect a genus-species relationship.

Allowable Subject Matter

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The following is a statement of reasons for the indication of allowable subject matter:

Claims 9-10 contain allowable subject matter, however are objected to on the grounds of double patenting as explained above. The claims contain allowable subject matter because prior art fails to teach in the structure comprises exposing the electrode to a refractory metal-halide complex.

Batra teaches a halide anneal gas (Col.2, lines: 60-65 but fails to teach treating the structure to a **metal**-halide treatment, as claimed by the applicant.

Prior art fails to teach roughening a Si structure through a metal halide treatment.

It would not have been obvious to replace the Ge halide complex taught by Batra with the metal halide disclosed by the applicant because the resulting structure would not oxidize through exposure. However a metal halide could oxide as a result of exposure which may provide the advantage in capacitor applications by forming a barrier for a capacitor dielectric.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6-8, 20-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Chu et al ('206).

In reference to claim 6, Chu teaches a method comprising:

Forming a Si electrode on a wafer (Fig.3 (18) See also Col.4, lines: 1-20);

Texturizing the Si electrode (See Fig.3 (20));

Replacing the Si in the Si structure with a metal (Col.4, lines: 18-21) to thereby form a textured metal electrode (Col.4, lines: 10-21- teaching that Ge could be replaced by a metal silicide). (See also Col.6, lines: 45-60)

In reference to claim 7, Batra teaches further comprising covering the electrode with a high dielectric constant material (Fig.3 (22)).

In reference to claim 8, Batra teaches further comprising covering the dielectric with a metal (Fig 3 (24)).

In reference to claim 20, Batra teaches a method comprising:

Forming a metal electrode with a textured surface (Fig.3 (18) and See Col.4, lines: 18-21);

Covering the surface with a dielectric (Fig.3 (22));

Covering the dielectric with a second electrode (Fig.3 (24)).

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In reference to claim 22 Batra teaches further including seeding and annealing (Col.3, lines: 50-55).

In reference to claim 23, Batra teaches wherein the metal comprises hemispherical grain Si morphology (Col.2, lines: 5-25).

In reference to claim 24, Batra teaches wherein the metal electrode comprises forming a rugged Si layer and converting it to metal (See Col.6, lines: 45-60).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chu et al ('206) as applied to claims above, and further in view of Zahurak et al ('434).

Chu ('206) fails to explicitly teach implementing Ti rather than Ge to roughen Si electrodes, however Zahurak et al ('434) teaches roughening Si electrodes through Ti to form a capacitor. It would have been obvious to replace the Ge dopant as taught by Batra with the Ti because Zahurak teaches that Ti may be used to accomplish the same roughened electrode structure. In reference to claim 11, Zahurak teaches wherein the dielectric is: TiOx (Col.7, lines: 55-65)

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In reference to claim 12, Zahurak teaches wherein the metal is Ti (Abs., lines: 1-20).

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura M Schillinger whose telephone number is (703) 308-6425. The examiner can normally be reached on M-F 7:00 -4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Olik Chaudhuri can be reached on (703) 306-2794. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1500.

LMS
June 12, 2002


OLIK CHAUDHURI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800